

Docket No. 186,569

- ## ISSUES

is given the Administrative Law Judge through K.S.A. 44-534a(a)(2) to make a preliminary award in reference to medical compensation. However, the respondent argues in its brief that since the treating physician released the claimant from treatment on July 15, 1994, and the claimant had not worked for the respondent since December 6, 1993, the claimant's present need for medical treatment could not be the result of his work-related injury that occurred on September 20, 1993. Accordingly, the Appeals Board finds that the respondent has raised a jurisdictional issue contained in K.S.A. 44-534a, as to whether or not the claimant's alleged accidental injury arose out of and in the course of his employment with respondent.

The claimant, a ten-year employee for the respondent, injured his back while lifting at work on September 20, 1993. He first received medical treatment for his back injury on September 22, 1993, with Occupational Medicine Associates in Kansas City, Kansas. During this first visit, treatment was provided by a therapist who manipulated the claimant, causing a burning sensation in his hip and numbness in his leg. Because of this injury, claimant was unable to perform his job duties and left the employment of the respondent on December 6, 1993.

Respondent's insurance carrier eventually referred the claimant for treatment to Stephen L. Reintjes, a neurosurgeon, who first saw the claimant on January 12, 1994. Dr. Reintjes diagnosed a left L5 radiculopathy secondary to an L4-L5 disc herniation. Dr. Reintjes placed the claimant in physical therapy treatment. In February 1994, Dr. Reintjes had the claimant undergo a lumbar myelogram with a follow-up CT scan. This examination showed a disc bulge at L5-S1 level on the right and a moderate disc bulging at L4-L5 but no disc herniation. Claimant then underwent a series of lumbar epidural steroid injections. Dr. Reintjes also ordered an EMG on April 18, 1994, that showed a probable left peroneal neuropathy and possible mild generalized peripheral neuropathy.

Dr. Reintjes, after last examining the claimant on May 3, 1994, in a letter to the insurance carrier dated July 15, 1994, opined that claimant had met maximum medical improvement. He rated the claimant as having a permanent partial functional impairment of five percent (5%) due to his lumbar strain.

From a referral of claimant's family doctor, Dr. Reintjes again saw the claimant on December 9, 1994. Dr. Reintjes, at that time, found that the claimant's disc bulge at L4-L5 was more prominent. He suggested a repeat lumbar myelogram with a follow-up CT scan. Dr. Reintjes noted that if this examination showed a significant left L5 nerve root compression, he would consider surgery.

At the March 23, 1995 Preliminary Hearing, claimant testified that he still had pain with residual effects from the injury in the left side of his back area and numbness radiating down his leg. He also testified that between September 20, 1993, his date of injury, and the date of his testimony, he had not suffered any intervening accidents.

Based on the claimant's testimony and the medical records entered into evidence at the Preliminary Hearing, the Appeals Board finds that claimant's current complaints are the natural and probable consequence of his original work-related injury of September 20, 1993. Accordingly, the Appeals Board affirms the Administrative Law Judge's decision that ordered a second medical opinion concerning the appropriate medical treatment for claimant's injury.

(2) In regard to the issue of temporary total disability benefits, the Appeals Board finds that the Administrative Law Judge did not exceed his jurisdiction in ordering these benefits

pursuant to K.S.A. 44-534a and therefore the Appeals Board does not have jurisdiction to review this issue.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Robert H. Foerschler, dated March 28, 1995, should be, and the same is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael E. Callen, Kansas City, KS
Jeffrey S. Austin, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
George Gomez, Director